



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

Docket No. DOT-OST-2010-0140

RIN No. 2105-AD92

Enhancing Airline Passenger Protections: Limited Extension of Effect Date for Full Fare Price Advertising

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Direct Final Rule; request for comments.

SUMMARY: This direct final rule delays the effective date regarding the time period for compliance with a portion of the full fare and other advertising requirements from January 24, 2012, to January 26, 2012. The intended effect of this delay is to provide regulatory relief to petitioner American Airlines by allowing the carrier and any other similarly situated carriers or ticket agents to avoid having to update full fare information in on-line reservations systems on a day of the week that is the petitioner's, and may be other carriers' and ticket agents', heaviest on-line traffic and revenue day. This action is necessary to minimize the detrimental effects of any difficulties that may arise in the immediate aftermath of on-line implementation of programming necessary to comply with the new requirement that sellers of air transportation advertise the full fare, including all government-imposed taxes and fees. This delay is a minor substantive change, in the public interest, and unlikely to result in adverse comment.

DATES: The effective date for the amendment to 14 CFR 399.84, published April 25, 2011, at 76 FR 23110, and delayed July 28, 2011, at 76 FR 45181, is further delayed until January 26,

2012. This delay is effective [insert date that is seven (7) days after publication in the *Federal Register*], unless an adverse comment or a written notice of intent to submit an adverse comment is received by [insert date that is seven (7) days after publication in the *Federal Register*]. OST will publish in the Federal Register a timely document confirming the delayed effective date for the amendment to 14 CFR 399.84.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2010-0140 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays
- Fax: (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2010-0140 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's

complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 *FR* 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Deputy Assistant General Counsel, or Dayton Lehman Jr, Principal Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), blane.workie@dot.gov or dayton.lehman@dot.gov (email), respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation issued a rule requiring that all airlines and ticket agents that advertise airfares or air tours must advertise the full fare to be paid for the air transportation or air tour, including all government-imposed taxes and fees. This rule changes the Department's past policy of permitting government taxes and fees imposed on a per-person basis, such as passenger facility charges and segment fees, to be stated separately from the advertised fare. The first time carriers and ticket agents must provide the full fare information in all fare advertisements, including their on-line reservations systems, is January 24, 2012. (76 *FR* 45181, July 28, 2011)

On December 8, 2011, American Airlines (American) submitted a motion to the Department requesting a change of the effective date of the rule from the 24th to the 26th of January, because the 24th falls on a Tuesday, which it states is its busiest internet traffic and

revenue day each week and may be the busiest for other sellers of air transportation as well. The carrier seeks to avoid having the complexities of rolling out the new pricing system when traffic and revenue activity is heaviest and any problems with the new system would be exacerbated. American points out that it is not feasible to implement the change earlier due to the extremely tight schedule necessary to complete its reprogramming and testing effort and that the requested 2-day extension will have no material negative effect on consumers. American asks that the requested relief apply to the websites of any party affected by the new rule, as well as to advertising that refers customers to websites for booking, such as that which appears on-line, in print, on television, and radio. American states that it informally canvassed several carriers and that the responses received were favorable. In addition, Department staff has informally heard from several organizations representing travel agencies and consumers which state they have no objection to the short extension requested.

Other carriers as well as ticket agents have in the past advised us that reprogramming their on-line reservations systems to comply with the new rule is a complex undertaking. Indeed, in response to such concerns, we extended the effective date of this rule for 90 days, from October 24, 2011, to its present date of January 24, 2012. (76 FR 45181, July 28, 2011) We can appreciate that any errors that might occur the first day the new system is implemented would have a greater impact on carriers or ticket agents selling air transportation if that day happens to be their busiest business day. We are concerned that, similarly, any such problems may have a more wide-ranging negative effect on consumers, as well. For this reason, and because we agree that a two-day delay in the start of the new rule will not significantly affect consumers, we find that grant of American's petition is in the public interest. In order to avoid confusion over

airfares advertised using various media, which include websites, email, print, television, and radio, this short two-day extension will apply to all fare advertisements.

The Direct Final Rule Procedure

On January 30, 2004, OST published a final rule adopting direct final rulemaking procedures intended to expedite the rulemaking process for noncontroversial rules. By using direct final rulemaking, OST can reduce the time necessary to develop, review, clear and publish a rule to which no adverse public comment is anticipated by eliminating the need to publish separate proposed and final rules (69 FR 4455).

OST anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, if no adverse or negative comment or written notice of intent to submit such a comment is received, OST will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If OST does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

Regulatory Analyses and Notices

A. *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This final rule is not a significant regulatory action under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Accordingly, this final rule has not been reviewed by the Office of Management and Budget (OMB).

B. *Regulatory Flexibility Act*

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this final rule does not have a significant impact on a substantial number of small entities. The final rule does not impose any duties or obligations on small entities.

C. *Executive Order 13132 (Federalism)*

This Final Rule does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

D. Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because the rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there is no new information collection requirements associated with this final rule.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this Final Rule.

ISSUED THIS 13th DAY OF DECEMBER, 2011, IN WASHINGTON D.C.

Susan Kurland
Assistant Secretary for Aviation and International Affairs

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